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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 423

PAUL F. BRUNING, PETITIONER

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The district court's memorandum of decision (R. 18–23) is reported at 192 F. Supp. 826. The opinion of the court of appeals (R. 31–34) is reported at 317 F. 2d 229.

JURISDICTION

The judgment of the court of appeals was entered on May 3, 1963 (R. 34–35). On August 2, 1963, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and including September 2, 1963 (R. 35). The petition was filed on August 30, 1963, and was granted on November 18, 1963 (R. 36; 375 U.S. 920). The jurisdiction of this

Court rests on Section 24c of the Bankruptcy Act, as amended, and 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether interest continues to run against the debtor personally on a tax debt preserved against discharge in bankruptcy by Section 17 of the Bankruptcy Act.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Bankruptcy Act and of the Internal Revenue Code of 1939 are set forth in Appendix A, *infra*, pp. 26–29.

STATEMENT

The taxpayer incurred a liability of over $4,000 for withholding and Social Security (F.I.C.A.) taxes for the fourth quarter of 1951. These taxes were not paid when due, and on March 3, 1952, an assessment thereof was made by the Internal Revenue Service. On July 6, 1953, when a substantial portion of these taxes remained unpaid, the taxpayer filed a voluntary petition in bankruptcy. The District Director of Internal Revenue filed a claim in bankruptcy for the balance of the assessed amount owed by the taxpayer. No dividend was paid in the bankruptcy proceedings to the general creditors, and payment of a dividend on priority claims, including taxes, was prorated. On July 10, 1956, the United States received from the bankruptcy estate a distribution of $701.32, which was applied against the assessment. On October 29, 1953, the taxpayer was granted a dis-

charge in bankruptcy, and the bankruptcy case was closed on June 29, 1954. (R. 25–26.)

In 1957 the taxpayer filed claims for refund of income taxes paid for the years 1953 and 1954. Upon audit of these claims the taxpayer was allowed a credit of $857.55 as to income taxes and interest paid for 1953 and $3,382.62 as to income taxes and interest paid for 1954. The Director of Internal Revenue reduced these credits by the amount of the balance of the assessment due for withholding and F.I.C.A. taxes for the fourth quarter of 1951 plus accrued interest to the date of payment, and distributed the remainder to the taxpayer. Contending that he was not liable for interest accruing on the assessment after the petition in bankruptcy was filed, the taxpayer brought a suit in the district court for refund of that portion of the interest which had accrued after such filing. (R. 26–27.)

The district court held that the taxpayer's personal liability for interest on unpaid taxes was not discharged by the Bankruptcy Act (R. 18–23, 28–29). The court of appeals affirmed. (R. 31–34.)

SUMMARY OF ARGUMENT

1. While a creditor of a bankrupt debtor has only such rights against the bankruptcy estate as are granted by the Bankruptcy Act and common law, he retains all of his rights to continue to proceed against the debtor personally unless the Act discharges the debt on which his action is based. There is no common-law rule of bankruptcy discharging a debtor from personal liability on any of his unpaid debts.

The traditional rule for liquidation of the bankruptcy estate has been that a creditor will be allowed only interest to the date of the petition in bankruptcy (*Sexton* v. *Dreyfus*, 219 U.S. 339), and this rule is applicable to tax claims (*New York* v. *Saper*, 336 U.S. 328). But the reasons of administrative convenience and fairness among competing creditors which explain this rule for distribution of a bankruptcy estate have no application to claims against the debtor personally, and the rule has not been applied to protect the debtor at the expense of creditors.

2. Under the Bankruptcy Act a discharge releases a debtor from liability for (1) provable debts that are (2) not specifically excepted from discharge by Section 17. A tax is one of the six classes of debts excepted from discharge and is therefore unaffected by the bankruptcy proceedings. The great majority of State and federal courts have assumed that interest continues to run on such debts until they are paid. This is, moreover, the necessary result under the statute. Interest accruing subsequent to the termination of the bankruptcy proceeding is not provable (and therefore not discharged) because it has not yet become a debt and is, in any event, wholly indeterminate in amount. Interest accruing during the bankruptcy proceeding is not provable under the holding of this Court in *New York* v. *Saper*, *supra*. Finally, even if some post-petition interest were provable, it would be as an integral part of the tax debt which is excepted from discharge by Section 17.

3. The Internal Revenue Code regularly defines interest as "part of the tax." Similar provisions have

been included in our tax laws for over thirty-five years and provisions for collecting interest in the same manner as the tax have been present since long before 1898 when the present Bankruptcy Act was first passed. These provisions express a congressional determination that the time of payment and, accordingly, the right to interest are as essential parts of the plan of revenue collection as the tax itself. Congress presumably has acted with this determination in mind in passing and repeatedly amending Section 17 of the Bankruptcy Act, which has always excepted from discharge the entire tax liability due the United States.

ARGUMENT

INTRODUCTION

The two basic functions of the Bankruptcy Act are (1) to provide a fair and orderly procedure under which creditors can attempt to realize on their claims against a bankrupt's property and (2) to provide a discharge for the bankrupt from further liability on many of these claims. The Act accomplishes these functions by provisions for mustering the assets of a bankrupt into a bankruptcy estate in the hands of a trustee; limiting the debts "provable" against the assets; providing for a judicial determination of which provable debts shall be allowed; providing for a fair distribution of the estate among creditors whose debts are allowed; and discharging the bankrupt from liability with regard to most of the provable debts.

Creditors of a bankrupt debtor have either one or both of two rights: (1) a right to proceed against

the trustee and bankruptcy estate on "provable" debts; and (2) a right to continue to proceed against the debtor on debts which are not discharged by the Bankruptcy Act. The scope of a creditor's rights depends upon whether his claim is a "provable" debt as defined in section 63 of the Act (11 U.S.C. 103) and whether such debt is covered by the discharge provision in section 17 of the Act (11 U.S.C. 35), which releases the bankrupt from liability only as to provable debts and even then with certain exceptions. The interaction of these sections gives the following results. Most debts that are provable against the trustee are discharged by section 17. A creditor holding such a claim can proceed only against the bankruptcy estate. Debts which are not provable against the trustee are not discharged by section 17. A creditor holding such a claim can proceed only against the debtor. Several classes of debts listed in section 17, however, may be proved against the trustee but are *not* discharged against the debtor. A creditor holding a claim in one of the specified classes may proceed against either the trustee or the debtor or both, but whatever he recovers from the bankruptcy estate is applied against the undischarged debt owed him by the bankrupt.

This case concerns interest on a tax debt, which is a claim provable against the trustee but excepted from discharge by section 17. As to claims against the trustee, the general rule for liquidation of the bankruptcy estate has long been that a creditor will only be allowed interest to the date of the petition in bankruptcy. *Sexton* v. *Dreyfus*, 219 U.S. 339. In *New*

York v. *Saper*, 336 U.S. 328, the Court held that this rule was applicable to claims against the trustee for taxes as well as to other debts. But the debt for taxes survives bankruptcy to the extent that it is not paid out of the estate. The question in this case, therefore, is whether, as a matter of the personal liability of the debtor, interest continues to run on a debt that is not discharged by the Bankruptcy Act. We submit that it plainly does because: (1) claims against a debtor personally are unaffected by bankruptcy proceedings unless they are discharged by section 17 of the Act; and (2) section 17 does not release the debtor from liability for post-bankruptcy interest on a debt which is not discharged by that section.

I

A DEBTOR IS NOT RELEASED FROM PERSONAL LIABILITY FOR A DEBT UNLESS THE DEBT IS DISCHARGED BY SECTION 17 OF THE BANKRUPTCY ACT

There is no common-law rule of bankruptcy discharging a debtor from personal liability on any of his unpaid debts. A debtor is released from personal liability only as to debts discharged by the Bankruptcy Act and only section 17 of the Act grants such a discharge. The petitioner asserts that the traditional rule of liquidation practice which denies post-petition interest as a claim against the bankruptcy estate also applies to discharge the debtor from personal liability for such interest even if the underlying debt is not discharged by section 17. We submit that this traditional rule plainly has no application to claims against the debtor personally. This is estab-

lished both by the fact that the reasons for the rule are wholly unrelated to actions against the debtor and by the fact that the rule has never been applied to deny creditors post-petition interest for the benefit of the bankrupt debtor.

The reasons for the rule limiting post-petition interest against the bankruptcy estate were early stated by this Court in *American Iron and Steel Manufacturing Co.* v. *Seaboard Air Line Railway*, 233 U.S. 261, 266–267:

> And it is true, as held in *Tredegar Co.* v. *Seaboard Ry.*, 183 Fed. Rep. 289, 290, that as a general rule, after property of an insolvent is in *custodia legis* interest thereafter accruing is not allowed on debts payable out of the fund realized by a sale of the property. But that is not because the claims had lost their interest-bearing quality during that period, but is a necessary and enforced rule of distribution, due to the fact that in case of receiverships the assets are generally insufficient to pay debts in full. If all claims were of equal dignity and all bore the same rate of interest, from the date of the receivership to the date of final distribution, it would be immaterial whether the dividend was calculated on the basis of the principal alone or of principal and interest combined. But some of the debts might carry a high rate and some a low rate, and hence inequality would result in the payment of interest which accrued during the delay incident to collecting and distributing the funds. As this delay was the act of the law, no one should thereby gain an advantage or suffer a loss.

> For that and like reasons, in case funds are not sufficient to pay claims of equal dignity, the distribution is made only on the basis of the principal of the debt. But that rule did not prevent the running of interest during the Receivership; and if as a result of good fortune or good management, the estate proved sufficient to discharge the claims in full, interest as well as principal shoud be paid. * * *

These reasons were restated in *Vanston Committee* v. *Green,* 329 U.S. 156, 164: "Accrual of simple interest on unsecured claims in bankruptcy was prohibited in order that the administrative inconvenience of continuous recomputation of interest causing recomputation of claims could be avoided. Moreover, different creditors whose claims bore diverse interest rates or were paid by the bankruptcy court on different dates would suffer neither gain nor loss caused solely by delay." The commentators have agreed that these are the sole purposes of the rule. See 3 Collier on *Bankruptcy* (14th ed. 1962), ¶ 63.16; MacLachlan, *Bankruptcy,* Sec. 147.

The reasons for the rule denying post-petition interest on a claim against the trustee and the bankruptcy estate are wholly inapplicable to actions brought against the debtor personally. Where an action is brought against the debtor rather than the estate, the collection of post-petition interest cannot inconvenience the administration of the bankruptcy estate; it cannot delay payment unduly; it cannot diminish the estate in favor of high-interest creditors at the expense of other creditors. The traditional

bankruptcy rule limiting post-petition interest against the estate, therefore, only applies to claims for such interest brought against the trustee and the bankruptcy estate. In short, the rule is one "of liquidation practice rather than * * * a rule of substantive law." 3 Collier on *Bankruptcy* (14th ed. 1962), ¶ 63.16, p. 1858.

That the rule does not supplement the statutory discharge provisions to release the debtor from all post-bankruptcy interest is demonstrated by one of its most important exceptions. For purposes of determining the rights of the creditors against the debtor interest continues to run until the debt is paid or retroactively discharged. *Id.*, at p. 1859. Thus, even as to assets which are part of the bankruptcy estate, if the estate is sufficient to pay all debts plus pre-petition interest, the excess is applied to pay the creditors post-petition interest; it is not returned to the bankrupt.[1]

In *New York* v. *Saper,* 336 U.S. 328, this Court held that the traditional rule denying post-bankruptcy interest against the trustee was applicable to tax

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[1] See *American Iron and Steel Manufacturing Co.* v. *Seaboard Air Line Railway*, 233 U.S. 261, 266–267:

"* * * But that rule did not prevent the running of interest during the Receivership; and if as a result of good fortune or good management, the estate proved sufficient to discharge the claims in full, interest as well as principal should be paid. * * *"

See also, MacLachlan, *Bankruptcy*, Sec. 147, p. 141: "As between the bankrupt and his creditors, however, the bankrupt should pay [interest] according to his contracts if he is able."

claims as well as to other debts. The Court plainly did not extend the rule to claims against the debtor. It held only that claims for taxes were not to be allowed post-bankruptcy interest against the bankruptcy estate when other provable debts were denied such interest. Thus, as the courts below held, after *Saper,* as before, post-petition interest on a debt remains a liability of the debtor personally unless it is discharged by section 17 of the Act.[2]

[2] The Tenth Circuit reached a contrary result, without any explanation, in *United States* v. *Mighell*, 273 F. 2d 682. The court apparently believed, erroneously, that the government had conceded this point and was relying only on the effect of its lien. Although we believe that the decisions of the Second Circuit in *Sword Line* v. *Industrial Commissioner of State of N.Y.*, 212 F. 2d 865 (C.A. 2d), certiorari denied, 348 U.S. 830, and *National Foundry Co. of N.Y.* v. *Director of Int. Rev.*, 229 F. 2d 149 (C.A. 2), involve a plain misconstruction of *Saper* and are erroneous largely for the reasons spelled out by Judge Frank dissenting in the *Sword Line* case, these decisions are also distinguishable from the present case because they both involved arrangement proceedings under Chapter XI of the Bankruptcy Act. As we have pointed out, the rule of liquidation practice forbidding post-petition interest is for the protection of pre-petition creditors, not of the bankrupt. After an arrangement—but not after an ordinary bankruptcy proceeding—pre-petition creditors continue to have an interest in the assets owned by the debtor at the time of petition and retained by the debtor pursuant to the arrangement. Thus, if post-petition interest on a tax is collected out of these retained assets, the burden may fall on the other pre-petition creditors. In contrast, they cannot be affected by an action against the undischarged debtor after an ordinary bankruptcy proceeding such as that in this case.

II

THE BANKRUPTCY ACT DOES NOT RELEASE A DEBTOR FROM PERSONAL LIABILITY FOR CONTINUING INTEREST ON A DEBT WHICH IS ITSELF EXCEPTED FROM DISCHARGE BY SECTION 17

Section 17 of the Bankruptcy Act[3] states explicitly that certain classes of debts, one of which is taxes, are not to be discharged. The debtor is to remain personally liable for these debts. As a matter of common understanding, one would assume that Congress intended neither the principal nor the interest on such a continuing debt to be affected by the bankruptcy proceeding. Thus, it has never been suggested that a creditor whose claim is not provable against the trustee in bankruptcy loses his right to interest in an action brought against the debtor personally. And where a discharge is denied the bankrupt, all creditors can collect continuing interest from the debtor personally for they then remain "free to pursue the collection * * * of their claims in the ordinary manner * * * as though no bankruptcy proceedings had ever been filed * * *." *In re Cameron,* decision of referee adopted by Judge Yankwich, 61-1, U.S.T.C. ¶ 9318 (S.D. Cal.). Congress presumably intended the same result in the case of a debt that is provable against the

[3] Section 17 (11 U.S.C. 35) provides:

"*Debts Not Affected by a Discharge.*—(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; * * *."

estate but not discharged against the debtor.[4] Because interest is both the cost of the use of amounts owing to a creditor and an important incentive to prompt repayment of a debt, it is, in almost every context, treated as an integral part of a continuing debt.

It is, perhaps, for this reason that, of the ninety cases we have been able to find dealing with post-petition interest on the classes of debts, other than taxes,[5] which are excepted from discharge under section 17, all but one has granted post-petition interest. These cases are set out in Appendix B, pp. 30–36. Although the interest was allowed in almost every instance without discussion, the near unanimity of approach demonstrates the common understanding in the courts throughout the country that the Bankruptcy Act was not intended to maintain in existence

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[4] A creditor with a provable claim that is not discharged in bankruptcy has no obligation to claim against the bankruptcy estate at all. He can simply continue to rely on his undischarged rights against the debtor personally. See *California State Board of Equal.* v. *Coast Radio Prod.*, 228 F. 2d 520 (C.A. 9th); *Salsbury Motors* v. *United States*, 210 F. 2d 171 (C.A. 9th), certiorari denied, 347 U.S. 953, and *Newburg* v. *United States*, 296 F. 2d 152 (C.A. 2d), affirming *per curiam* 187 F. Supp. 158 (S.D. N.Y.).

[5] There is, of course, no basis for distinction in the case of tax claims. The court below observed that if it ruled that after bankruptcy the interest on taxes is not collectible (R. 34)—

"* * * would we not give away the interest of him who was defrauded, the victim of the willful and brutal injury, those who lost by embezzlement? Perhaps we could waive the interest of the holders of judgment for breaches of promises to marry without too many qualms. But how could we choose among the beneficiaries of Section 17a?"

a creditor's claim against the debtor personally and yet cut off the interest which is merely a normal incident of any debt. This is, indeed, no more than the other side of the established proposition that all post-petition interest is cut off on a provable debt which is discharged by section 17 because such a discharge is retroactive to the date of the filing of the petition in bankruptcy and interest cannot run after the principal has been discharged. 3 Collier on *Bankruptcy* (14th ed. 1962), ¶ 63.16, p. 1861.[6]

The correctness of this common understanding that Congress intended to leave the entire amount of certain debts (interest as well as principal) unaffected by bankruptcy proceedings is confirmed by the fact that post-bankruptcy interest on these debts simply cannot be discharged under the language of section 17 of the Act (11 U.S.C. 35). The discharge provision states that a "discharge in bankruptcy shall release a bankrupt from all of his provable debts" except those of six enumerated classes, the first of which is debts "due as a tax levied by the United States, or any State * * *."[7] To be discharged, a

[6] Speaking of post-petition interest on a debt that is discharged, Collier states (p. 1861):

"* * * while it is true that a debt which is not provable is not discharged, interest is only an incident and appurtenance of a debt that is, in the situation here considered, provable. It should not survive the source from which it stems, namely the debt retroactively extinguished as of the filing date."

[7] The next five classes of debts which are not discharged are:

(2) liabilities for: obtaining money or property by false representations, willful and malicious injuries to person or property, alimony, maintenance or support of wife or

creditor's claim must be both (1) a provable debt *and* (2) not specifically excepted from discharge. We shall show first with regard to interest accruing after the final termination of the bankruptcy proceeding and then with regard to interest accruing during the proceeding, that post-petition interest on a tax claim is not a provable debt. We shall then show that, in any event, to the extent that interest is provable it is excepted from discharge by section 17.

A. *Interest accruing after the final termination of the proceeding in bankruptcy is not discharged because it is not a provable debt.*

The Bankruptcy Act does not discharge a creditor's right of action against the debtor unless the creditor receives, in exchange, a provable claim against the bankruptcy estate, *i.e.*, unless the creditor's claim is a provable debt. Liabilities arising after the termination of the bankruptcy proceeding are, of course, not claims that are "provable" against the bankruptcy estate and they are, therefore, not discharged. Interest accruing after the termination of the proceeding on a debt which is preserved against discharge by the Act is such a non-provable, and, therefore, undischarged liability. It is not a "provable debt" within the requirements for discharge in section 17 because:

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child, various specified causes of action involving sex relations.

(3) Unscheduled claims.

(4) Debts created by fraud, embezzlement, misappropriation or defalcation in a fiduciary capacity.

(5) Wages earned within three months before bankruptcy.

(6) Moneys of an employee deposited to secure performance of a contract of employment.

(1) it has not become due at any time during the proceeding; and (2) there is no way of estimating whether it will ever be owing or in what amounts, for the debtor may repay the debt before the interest becomes due. Such debts are never "provable" in determining the distribution of the bankruptcy estate.

Finally, even if such a liability for interest accruing after the termination of the bankruptcy proceeding were otherwise "provable" under section 63, it would be treated as non-provable for purposes of the discharge provision because it cannot be valued during the proceeding. Section 57d provides that even a provable claim

> shall not be allowed if the court shall determine that it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this title.

An interest claim for a wholly indefinite future period is such a claim. In this situation, section 63d provides that even an otherwise provable debt shall retroactively lose its character as "provable" so that the creditor, who cannot obtain payment of his claim out of the assets of the bankrupt estate, shall not be prevented by section 17 from bringing an action on the debt against the debtor personally. See 3 Collier on *Bankruptcy, supra,* ¶¶ 57.15, 63.16; H. Rep. No. 1409, 75th Cong., 1st Sess., pp. 14–15, to accompany the 1938 Revision of the National Bankruptcy Act.

B. *Interest accruing during the pendency of a bankruptcy proceeding is not discharged because it is not a provable debt.*

"The firmly established general rule is that the provability of a claim depends upon its status at the time the petition is filed." 3 Collier on *Bankruptcy* (14th ed. 1962), ¶ 63.04, p. 1772. With certain specifically enumerated exceptions, unless a debt is due at that date it is not provable. Since *Sexton* v. *Dreyfus*, 219 U.S. 339, this rule "has been recognized to govern the computation of interest." *Id.* at 1774. Interest accruing after the filing of the petition in bankruptcy is not an exception provided for by the statute. To the contrary, section 63, which defines provability of claims, indicates clearly that post-petition interest shall not be provable. Thus section 63(a)(1) makes provable against the trustee a debt on a judgment or written instrument but only "with any interest thereon which would have been recoverable" "at the time of the filing of the petition". And section 63(a)(5) includes, as provable, debts "reduced to judgments after the filing of the petition" but only after subtracting "interest accrued after the filing of the petition."

Referring specifically to these considerations, this Court held in *New York* v. *Saper, supra*, that post-petition interest on a tax claim is not authorized against the estate. While the opinion is not explicit as to whether such interest is not provable or is provable but, simply as an equitable matter, not allowable against the estate, we submit that the general rule defining provability of claims as of the date of petition and the explicit exceptions of post-petition

interest from provable claims in section 63 establish that post-petition interest is not provable.[3] See MacLachlan, *Bankruptcy*, Sec. 147, p. 141 ("It is now settled by Supreme Court decision, that interest on taxes after the date of the petition is not provable").

C. *Interest on an undischarged debt, to the extent that it is provable, is an integral part of the debt excepted from discharge.*

Even if some part of the post-petition interest on a tax were provable against the trustee, it would be preserved against discharge by the exception for "provable debts" for taxes. Interest on a provable liability is not, itself, a separately provable debt in bankruptcy.[4] To the extent that such interest is provable it is always as an integral part of the single claim for principal and interest made provable by the Act. When, for example, a debt on a note with interest to date of the petition in bankruptcy is made provable by section 63(a)(1) there are not three separate debts: a provable debt for the principal amount of the note; a provable and allowable debt for interest to the date of petition; and a not-provable or, at least, not allowable, debt for post-petition interest. There is a

[3] The fact that post-petition interest can be collected from a solvent estate (*supra*, p. 10) does not show that such interest is provable. Such interest is allowed merely as an adjustment of the equities of debtor and creditors and is allowed on claims under 63(a) (1) and (5)—where such interest is explicitly made non-provable—as well as on all other debts.

[4] As long ago as the leading case of *Johnson* v. *Norris*, 190 Fed. 459, 465 (C.A. 5), it was established that:

"The proof of an interest-bearing claim is proof of the interest collectible on such claim. Interest is an incident of, or a part of, the debt, and no separate proof of it is required."

single provable debt for principal and interest on a note which must, as a matter of liquidation practice, be valued as of some date, and the date chosen is the date of the petition. See *Sexton* v. *Dreyfus*, 219 U.S. 339, 344-345.

The Act provides other illustrations of the fact that interest, to the extent it is provable, is always treated as an integral part of the debt on which it accrued. Thus, section 63(a)(5) defines and values the provable debt by subtracting post-petition interest from a judgment obtained after the filing of the petition, leaving principal and all other interest as a single provable debt. And the pre-petition interest authorized by the other subsections of section 63 is authorized only implicitly as part of another debt. Again, all provable interest, as well as principal, has regularly been given the priority that section 64 affords only to provable debts for "taxes legally due and owing by the bankrupt to the United States or any State * * *." See, *e.g.*, *In re Lexington Homes*, 94 F. Supp. 482 (D.N.J.). In each of these instances interest, to the extent it is provable, is treated as an integral part of a single debt for principal and interest; it is never handled in any other way by the statute.

To the extent that interest is provable on a tax liability it is provable as part of a single provable debt for taxes. But provable debts for taxes are specifically excepted from discharge by section 17. This is the reason pre-petition interest is concededly not discharged in the present case. The same rationale

would control post-petition interest if it, too, were provable.[10]

In sum, section 17 of the Bankruptcy Act is intended to except *all* of a debt for taxes (including both principal and interest) from discharge. So much of the debt as is not provable is not discharged because only provable debts are discharged; as much as is provable is specifically excepted from discharge.[11] The necessary result conforms precisely to the generally held assumption (*supra*, pp. 12–14) that, when the Act preserves a debt from discharge, it means that the debt is unaffected by the bankruptcy proceeding and retains all its normal incidents including continuing interest.

III

IN EXCEPTING FEDERAL TAXES FROM DISCHARGE, CONGRESS INTENDED TO INCLUDE THE ACCOMPANYING INTEREST, WHICH THE FEDERAL TAX LAWS HAVE, FOR MANY YEARS, DEFINED AS AN INTEGRAL PART OF THE TAX; SECTION 6873(a) OF THE 1954 CODE DOES NOT INDICATE A CONTRARY INTENT FOR CASES WHERE THE UNITED STATES HAS FILED A CLAIM AGAINST THE ESTATE

1. What has been said would apply to interest on *any* debt excepted from discharge by section 17. There are, moreover, additional reasons why interest must be treated as part of a tax debt due the federal

[10] Judge Frank, dissenting in *Sword Line* v. *Industrial Commissioner of New York*, 212 F. 2d 865, 870, regarded post-petition interest on a tax as "provable" but not discharged for this reason.

[11] The same is, of course, true of each of the other classes of debts excepted from discharge by section 17.

government and excepted, therefore, from discharge by section 17.

For the years here in issue, the interest claimed by the government was imposed, so far as the Social Security taxes are concerned, by section 1420(b) of the Internal Revenue Code of 1939 (Appendix A, *infra*, p. 28), which provides:

> (b) Addition to Tax in Case of Delinquency.—If the tax is not paid when due, there shall be added *as part of the tax* interest * * * at the rate of 6 per centum per annum from the date the tax became due until paid. [Emphasis supplied.]

Section 1627 of the 1939 Code (Appendix A, *infra*, p. 29), dealing with the withholding tax, incorporates by reference section 1420(b). Indeed, the general scheme of the Code throughout is to treat interest as part of the tax. For example, section 292(a) of the 1939 Code and its predecessor provisions since 1918, dealing with interest on deficiencies in income tax, have provided that interest shall be collected "as a part of the tax" and a number of other sections contain similar provisions.[12] Related provisions stating that interest shall be collected in the same manner as the tax have been included in our tax laws since long before 1898 when the present Bankruptcy Act was

[12] See *e.g.*, Sections 294(a)(1); 294(b); 295; 296; 297; 298; 890(a) and (b); 891; 892; 893(a)(1); 893(b)(1), (3), and (4); 1020(a) and b); 1021; 1022; 1023(a)(1); 1023(b)(1), (3), and (4); 1530(c); 1605(b); 1717; 1853(c); 2403(b); 2451(b); 2475; 2706; 3448(b); 3470; 3495; and 3779(i). The provisions of the 1954 Code are substantially the same. See Sections 6601(a) and (f) and 6659(a)(2).

first passed. See, *e.g.*, Revised Statutes, Sec. 3176. The policy expressed by each of these provisions is that the time of payment and, accordingly, the right to interest is as essential a part of the scheme of revenue collection as is the tax itself. These provisions are, in short, bottomed on "the basic necessity of the Government to collect a carefully estimated sum of money by a particular date in order to meet its anticipated expenditures." *Rodgers* v. *United States*, 332 U.S. 371, 374.

The courts have also long recognized that interest constitutes an integral part of a tax liability. For example, interest has been considered as part of the tax for purposes of bringing a suit for refund (*Nelson-Wiggin Piano Co.* v. *United States*, 84 F. 2d 47 (C.A. 7); of denying an injunction against "the collection of taxes" (*Voss* v. *Hinds*, 208 F. 2d 912 (C.A. 10); and of asserting liability against a transferee or a partner, where the transferor or the partnership failed to make a timely payment of the taxes owed (*Young* v. *Riddell*, 283 F. 2d 909, 910–911 (C.A. 9)). In short, the courts have recognized a

> general rule that a tax and resulting interest are to be treated as constituting a single liability and thus one cause of action, and not merely an aggregation of separate items of indebtedness.[11]

This historic treatment of interest in a manner identical to that of the underlying Federal tax lia-

[11] *Western Maryland Ry. Co.* v. *United States*, 23 F. Supp. 554, 556 (D. Md.).

bility was doubtless known to Congress in passing and repeatedly amending section 17 of the Bankruptcy Act, which has always excepted from discharge all of a tax liability due the United States. There is accordingly every reason to assume that when Congress determined that the necessities of collecting revenue required preserving taxes against discharge by section 17, it also intended to preserve the interest which has for so long been treated as part of the tax by the Internal Revenue Code.

2. Petitioner contends that, while the government is free to ignore the bankruptcy proceedings and rely on its undischarged claim against the taxpayer for principal and interest, if it files a claim in the bankruptcy proceeding, section 6873 of the Internal Revenue Code of 1954[11] limits the government's rights against the debtor to the recovery of unpaid sums allowed by the trustee. Post-petition interest is not so allowed (Pet. Br. 9–12). Since the debtor benefits in the form of a reduction of his liability by any recovery the government makes from the estate, there is absolutely no reason why some part of the government's rights against the debtor should be "waived" by filing a claim in the bankruptcy proceeding. It is clear, moreover, that section 6873(a) of the Internal Revenue Code of 1954 was never intended to limit the

[11] Section 6873 provides:

"(a) General Rule.—Any portion of a claim for taxes allowed in a receivership proceeding or any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding."

government's right to continuing interest on an undischarged tax liability.

This section, together with the predecessor provisions of section 6871, was first passed, in nearly identical language, as Section 282 of the Revenue Act of 1926 (44 Stat. 62). Its purpose was to allow the government's claim for a deficiency to be contested before the bankruptcy court without awaiting the initiation and resolution of proceedings before the Board of Tax Appeals (now the Tax Court). Otherwise, it was thought, the government might be prevented from collecting the deficiency out of the bankruptcy estate. Congress feared that the statute might imply that the government was surrendering its rights against the debtor as to claims which were allowed against the estate but not paid. Out of an excess of caution, the provision now found in section 6873(a) was added to make clear that: "The bankruptcy and receivership proceedings do not foreclose any unsatisfied portion of the claim of the United States and such portion may be collected by distraint or otherwise within six years after the termination of the bankruptcy or receivership proceedings." S. Rep. No. 52, 69th Cong., 1st Sess., p. 31; H. Rep. No. 356, 69th Cong., 1st Sess., pp. 45–46.[15]

[15] It is worth noting that, in passing the 1926 Act, Congress plainly assumed that post-petition interest was allowable for the period during the pendency of the bankruptcy proceeding. It, therefore, could be collected from the debtor if it was not paid by the trustee. See H. Rep. No. 356, 69th Cong., 1st Sess., pp. 45–46. Moreover, the statute itself imposed interest after the termination of the bankruptcy proceeding on the unpaid amount allowed by the trustee. See section 282(c) of the Revenue Act of 1926, 44 Stat. 62.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is correct and should be affirmed.

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FEBRUARY 1964.

APPENDIX A

Bankruptcy Act, c. 541, 30 Stat. 544, *et seq.*:

Sec. 17 [as amended by Sec. 1, Act of June 22, 1938, c. 575, 52 Stat. 840]. *Debts Not Affected by a Discharge.*—a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if know to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment.

(11 U.S.C. 1958 ed., Sec. 35.)

Sec. 57 [as amended by Act of June 22, 1938, *supra*]. *Proof and Allowance of Claims.*

* * * * *

(d) Claims which have been duly proved shall be allowed upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest or unless their consideration be continued for cause by the court upon its own motion: *Provided, however,* That an unliquidated or contingent claim shall not be allowed unless liquidated or the amount thereof estimated in the manner and within the time directed by the court; and such claim shall not be allowed if the court shall determine that it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this Act.

* * * * *

(26 U.S.C. 1958 ed. Sec. 93.)

SEC. 63 [As amended by Act of June 22, 1938, *supra*]. *Debts Which May Be Proved.*—a. Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) costs taxable against a bankrupt who was at the time of the filing of the petition by or against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a probable debt; (4) an open account, or a contract express or implied; (5) provable debts reduced to judg-

ments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments; (6) an award of an industrial-accident commission, body, or officer of any State having jurisdiction to make awards of workmen's compensation in case of injury or death from injury, if such injury occurred prior to adjudication; (7) the right to recover damages in any action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy; (8) contingent debts and contingent contractual liabilities; or (9) claims for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property * * *

* * * * * *

d. Where any contingent or unliquidated claim has been proved, but, as provided in subdivision d of section 57 of this Act, has not been allowed, such claim shall not be deemed provable under this Act.

(11 U.S.C. 1958 ed., Sec. 103.)

SEC. 64 [As amended by Act of June 22, 1938, *supra*; Sec. 131, Act of May 24, 1949, c. 139, 63 Stat. 89; and Sec. 19(a), Act of July 7, 1952, c. 579, 66 Stat. 420]. *Debts Which Have Priority.*—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be * * *

* * * * * *

* * * (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof * * *

* * * * * *

(11 U.S.C. 1958 ed., Sec. 104.)

Internal Revenue Code of 1939:

SEC. 1420. COLLECTION AND PAYMENT OF TAXES.

* * * * * *

(b) *Addition to Tax in Case of Delinquency.*—If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of section 1401 (c) and 1411) at the rate of 6 per centum per annum from the date the tax became due until paid.

* * * * * *

(26 U.S.C. 1952 ed., Sec. 1420.)

SEC. 1627. [As added by Sec. 2(a), Current Tax Payment Act of 1943, 57 Stat. 126]. OTHER LAWS APPLICABLE.

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1400 shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the tax under this subchapter.

(26 U.S.C. 1952 ed., Sec. 1627.)

Internal Revenue Code of 1954:

SEC. 6873. UNPAID CLAIMS.

(a) General Rule.—Any portion of a claim for taxes allowed in a receivership proceeding or any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding.

* * * * * *

(26 U.S.C. 1958 ed., Sec. 6873.)

Appendix B

Decisions allowing post-bankruptcy interest on debts, other than taxes, excepted from discharge under Section 17a of the Bankruptcy Act.*

Section 17a(2), False Pretenses and False Representations:

California Bank v. *Clay*, 207 Cal. App. 2d 25, 24 Cal. Rptr. 185 (1962)

Personal Finance Co. v. *Beeman*, 9 Conn. Supp. 103 (C.P., 1941)

Personal Finance Co. of New Haven v. *Vigneault*, 10 Conn. Supp. 446 (C.P., 1942)

M–A–C Loan Plan, Inc. v. *Cooper*, 23 Conn. Supp. 184, 179 A. 2d 313 (Cir. Ct., 1961)

Loony Creek Coal Co. v. *Lewis*, 227 Ky. 323, 12 S.W. 2d 852 (1928)

C H F Finance Co. v. *Jochum*, 241 La. 155, 127 S. 2d 534 (1961)

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*The sole non-tax decision in which interest was disallowed was that of the trial court in *Accounts Supervision Co.* v. *Atley*, 89 S. 2d 508 (La. App., 1956) (The trial court awarded judgment to the creditor for the principal amount of the debt but denied post-petition interest. The appellate court reversed the judgment with respect to the principal amount of the debt and stated that it was unnecessary to decide the interest issue.)

Without discussion post-bankruptcy interest was allowed under section 17a in the following tax cases: *United States* v. *Piper*, 202 F. Supp. 657 (E.D. Ill., 1961); *Gilbert* v. *United States Fidelity & Guaranty Co.*, 180 F. Supp. 794 (M.D. Ga., 1959), affirmed *per curiam*, 274 F. 2d 823 (C.A. 5th, 1960); *City of Philadelphia* v. *Spotless, Inc.*, 19 Pa. D.&C. 2d 148 (1958). The only contrary decision, aside from those discussed *supra*, p. 11, n. 2, is *St. Paul-Mercury Indemnity Co.* v. *Donaldson*, 225 S.C. 476, 83 S.E. 2d 159 (1954).

Armour Fertilizer Works v. *Peninger*, 158 So. 241 (La. App., 1935)

Personal Finance Co. of Shreveport v. *Murphy*, 53 S. 2d 421 (La. App., 1951)

Morris Finance & Loan v. *Dickerson*, 57 S. 2d 786 (La. App., 1952)

Public Loan Corp. v. *Adams*, 66 S. 2d 6 (La. App., 1953)

Equitable Securities Co. v. *Schwaner*, 107 S. 2d 330 (La. App., 1958) (The trial court awarded judgment for the principal amount of the debt plus post-petition interest. The appellate court reversed with respect to the principal amount of the debt.)

Earl Staehle Finance, Inc. v. *Brooks*, 144 S. 2d 155 (La. App., 1962)

Excel Finance Baronne, Inc. v. *Dobbs*, 146 S. 2d 202 (La. App., 1962) (The trial court awarded judgment for the principal amount of the debt plus post-petition interest. The appellate court reversed with respect to the principal amount of the debt.)

Liberal Finance Gentilly, Inc. v. *Brister*, 152 S. 2d 331 (La. App., 1963)

C H F Finance Co. v. *Corca*, 152 S. 2d 830 (La. App., 1963)

Liberal Finance Corp. v. *Holley*, 157 S. 2d 376 (La. App., 1963)

Personal Finance Co. v. *Moore*, 153 Maine 122, 135 A. 2d 414 (1957)

Levin v. *Singer*, 227 Md. 47, 175 A. 2d 423 (1961)

International Trust Co. v. *Myers*, 241 Mass. 509, 135 N.E. 697 (1922), reversed on other grounds, 263 U.S. 64 (1923)

Maier v. *Meyers*, 314 Mich. 471, 22 N.W. 2d 869 (1946)

Dick v. *Dick*, 11 N.J. Super., 533, 78 A. 2d 580 (1951)

Beneficial Finance Co. v. *Norton*, 76 N.J. Super. 577, 185 A. 2d 218 (1962)

Growers Exchange v. *Hartman*, 220 N.C. 30, 16 S.E. 2d 398 (1941)

Public Loan Corp. v. *Hood*, 71 Ohio L. Abs. 423, 125 N.E. 2d 770 (C.P., 1955)

Topolos v. *Skotheim*, 126 Ore. 683, 270 Pac. 753 (1928)

Porta v. *Weathers*, 5 Tenn. App. 555 (1927)

Gaddy v. *Witt*, 142 S.W. 926 (Tex. Civ. App., 1911)

Boerner v. *Cicero Smith Lumber Co.*, 293 S.W. 632 (Tex. Civ. App., 1927), reversed on other grounds, 298 S.W. 545 (Tex. Comm. App., 1927)

Ginsberg v. *International Shoe Co.*, 299 S.W. 695 (Tex. Civ. App., 1927)

Blumberg v. *Louis Henne Co.*, 5 S.W. 2d 1015 (Tex. Civ. App., 1928)

Public Finance Corp. v. *Londeree*, 200 Va. 607, 106 S.E. 2d 760 (1959) (The trial court awarded judgment for the principal amount of the debt plus post-petition interest. The appellate court reversed with respect to the principal amount of the debt.)

Household Finance Corp. v. *DeShazo*, 57 Wash. 2d 771, 359 P. 2d 1044 (1961)

Household Finance Corp. v. *Christian*, 8 Wis. 2d 53, 98 N.W. 2d 390 (1959)

Section 17a(2), Willful and Malicious Injuries:

Barbachano v. *Allen*, 192 F. 2d 836 (C.A. 9th, 1951)

Western Surety Co. v. *Rich*, 141 F. Supp. 872 (W.D. Okla., 1956)

Fitzgerald v. *Herzer*, 78 Cal. App. 2d 127, 177 P. 2d 364 (1947)

Russell v. *Peters*, 219 Iowa 708, 259 N.W. 197 (1935)

Excel Finance Camp, Inc. v. *Tannerhill*, 140 S. 2d 202 (La. App., 1962)

Tudryck v. *Mutch*, 320 Mich. 86, 30 N.W. 2d 512 (1948), certiorari denied *sub nom. Tudryck* v. *Martin*, 334 U.S. 819 (1948)

Wood v. *Fiske*, 175 App. Div. 135, 161 N.Y.S. 1097 (1916)

Ever-Ready Label Corp. v. *Stuyvesant Photo Engraving Corp.*, 36 N.Y. S. 2d 468 (Sup. Ct., 1942)

Magidson v. *Smith*, 113 Ohio App. 465, 178 N.E. 2d 813 (1961)

Sabinal Nat. Bank v. *Bryant*, 221 S.W. 940 (Tex. Comm. App., 1920)

Smith v. *Ladrie*, 98 Vt. 429, 129 Atl. 302 (1925)

Estate of Weil, 249 Wis. 385, 24 N.W. 2d 662 (1946), certiorari denied *sub. nom. Weil* v. *Haessler Hardware Co.*, 331 U.S. 807 (1947)

Section 17a(2), Alimony and Support:

In re Avery, 114 F. 2d 768 (C.A. 6th, 1940)

Blair v. *Blair*, 44 Cal. App. 2d 140, 112 P. 2d 39 (1941)

Allison v. *Allison*, 372 P. 2d 946 (Colo., 1962)

Cederberg v. *Gunstrom*, 193 Minn. 421, 258 N.W. 574 (1935)

Ross v. *Keith*, 238 App. Div. 640, 265 N.Y.S. 246 (1933)

Webster v. *Webster*, 24 Pa. Dist. 884 (1913)

Egbers v. *Egbers*, 98 Wash. 581, 167 Pac. 1073 (1917)

Section 17a(3), Nonscheduled Debts:

United States v. *Kassan*, 208 F. Supp. 858 (S.D. Cal., 1962)

King v. *Harry*, 131 F. Supp. 252 (D.C. D.C., 1955)

Ashbaugh v. *Belanger*, 39 F. Supp. 401 (E.D. Mich., 1941)

United States v. *Golenburg*, 175 F. Supp. 415 (N.D. Ohio, 1959)

United States v. *Hermetic Seal Products Co.*, 198 F. Supp. 749 (P.R., 1961), modified, 307 F. 2d 809 (C.A. 1st, 1962), affirmed, 309 F. 2d 482 (C.A. 1st, 1962), certiorari denied, 371 U.S. 954 (1963)

Gilmore v. *Farmer*, 156 Ill. App. 70 (1910)

Welch v. *Noah*, 52 S.W. 2d 493 (Mo. App., 1932)

Wohlschlaeger v. *Dorsey*, 206 S.W. 2d 677 (Mo. App., 1947)

Wheeler v. *Newton*, 168 App. Div. 782, 154 N.Y. S. 431 (1915), affirmed, 220 N.Y. 607, 115 N.E. 1053 (1917)

Horbach v. *Arkell*, 172 App. Div. 566, 158 N.Y.S. 842 (1916)

Collins v. *McWalters*, 35 Misc. 648, 72 N.Y.S. 203 (Sup. Ct., 1901)

Columbia Bank v. *Birkett*, 36 Misc. 391, 73 N.Y. S. 704 (Sup. Ct., 1901), affirmed, 65 App. Div. 615, 73 N.Y.S. 1132 (1901), affirmed, 174 N.Y. 112, 66 N.E. 652 (1903), affirmed, 195 U.S. 345 (1904)

Bronx Credit Union v. *Weisbrott*, 203 N.Y.S. 90 (App. T., 1924)

Morganstern v. *Tulchin*, 140 Misc. 44, 250 N.Y.S. 498 (Mun. Ct., 1931)

Johnson v. *Fountain*, 200 N.C. 388, 157 S.E. 21 (1931) (The trial court awarded judgment for the principal amount of the debt plus post-petition interest. The appellate court reversed with respect to the principal amount of the debt.)

Lown v. *Casselman*, 25 N.D. 44, 141 N.W. 73 (1913)

Cole v. *Beals*, 66 Ohio App. 173, 32 N.E. 2d 48 (1940)

Fifth Ave. B. & L. Assn. v. *Goldberg*, 22 Pa. Super. 197 (1903)

Ingram v. *Carruthers*, 194 Tenn. 290, 250 S.W. 2d 537 (1952)

Dodgen v. *McCrea*, 225 S.W. 71 (Tex. Civ. App., 1920)

Taylor v. *Thompson*, 39 S.W. 2d 923 (Tex. Civ. App., 1931) reversed on other grounds *sub nom. Byrne* v. *Taylor*, 58 S.W. 2d 22 (Tex. Comm. App., 1933)

Section 17a(4), Fiduciary Misconduct:

Hartford Accident & Indemnity Co. v. *Flanagan*, 28 F. Supp. 415 (S.D. Ohio, 1939)

Raia v. *Goldberg*, 34 S. 2d 620 (Ala. App., 1948)

Morris v. *Covey*, 104 Ark. 226, 148 S.W. 257 (1912)

England Loan Co. v. *Campbell*, 183 Ark. 49, 35 S.W. 2d 75 (1931)

Donahue v. *Conley*, 85 Cal. App. 15, 258 Pac. 985 (1927)

Des Moines Bk. & Tr. Co. v. *Bechtel & Co.*, 243 Iowa 1007, 51 N.W. 2d 174 (1952)

Boyd v. *Applewhite*, 121 Miss. 879, 84 So. 16 (1920)

Parish v. *Lumbermen's Mutual Co.*, 242 Miss. 288, 134 S. 2d 488 (1961)

Ruff v. *Milner*, 92 Mo. App. 620 (1902)

Frey v. *Torrey*, 36 Misc. 216, 73 N.Y.S. 201 (App. T., 1901), affirmed, 70 App. Div. 166, 75 N.Y.S. 40 (1902), affirmed, 175 N.Y. 501, 67 N.E. 1082 (1903)

Jewish Kosher Provision Corp. v. *Gottfried*, 63 N.Y.S. 2d 160 (City Ct., 1946)

Bannon v. *Knauss*, 57 Ohio App. 288, 13 N.E. 2d 733 (1937)

Fidelity & Casualty Co. of New York v. *Brown*, 40 Ohio L. Abs. 617, 14 Ohio Supp. 95 (C.P., 1943)

McClain v. *Madry*, 6 Tenn. App. 75 (1927)

Brown v. *Robey*, 27 S.W. 2d 590 (Tex. Civ. App., 1930)

Orndorff v. *State*, 108 S.W. 2d 206 (Tex. Civ. App., 1937)

Stickney v. *Parmenter*, 74 Vt. 58, 52 Atl. 73 (1901)

Estate of Weil, 249 Wis. 385, 24 N.W. 2d 662 (1946) certiorari denied *sub nom. Weil* v. *Haessler Hardware Co.*, 331 U.S. 807 (1947)

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